

### REMARKS

In the outstanding Office Action of June 29, 1998, two main issues are asserted. First, the pending claims have been rejected under the judicially created doctrine of obviousness-type patenting in view of U.S. Patent No. 5,728,541, of which the present application is a continuation. By means of the enclosed Terminal Disclaimer, entry of which is requested, it is believed that this double patenting rejection will be seen as in condition for withdrawal.

The other assertions in the Office Action address the question of the size of the "cohesive multicellular particulates" used to form the tissue monolayer as described in the claims. In order to address this question, size-describing language has been added to claim 13 and to new independent claim 20, support for which appears on page 5 of the specification. By defining the cohesive multicellular particles as either having smooth cut edges or as being particles of minced tumor tissue, size limitations are now inherent in the claims, reflecting the inventive disclosure. According to the specification description regarding mincing the tissue, and by virtue of the claim language now presented, it is apparent that the particles which are useful in growing out cell monolayers are those representative of small minced particles of tumor tissue, not so small as to be merely one or a few cells, which could not be prepared with mincing tools such as scalpels, nor so large as an undivided biopsy sample--since such a sample would according to the specification subsequently have to be minced. Moreover, in the specification, the use of the verb "minced" means to cut or chop into very small

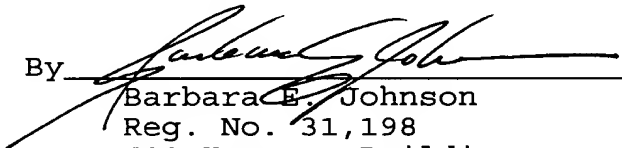
pieces, but the recited requirement of "smooth cut edges" according to claim 13 eliminates a two-cell or even multicellular particle of microscopic size. Because the claims now parallel the particle size disclosure typified by the description on page 5 of the specification, the claim recitation of an appropriate size range is now apparent in the claims.

The Examiner is requested to review and to allow claims 13-20 and to pass this case to the Issue Branch. If any issue remains for resolution, the undersigned would very much appreciate a telephone call at the number listed below.

Respectfully submitted,

WEBB ZIESENHEIM BRUENING LOGSDON  
ORKIN & HANSON, P.C.

By

  
Barbara E. Johnson  
Reg. No. 31,198  
700 Koppers Building  
436 Seventh Avenue  
Pittsburgh, PA 15219-1818  
Attorney for Applicant  
Telephone: (412) 471-8815  
Facsimile: (412) 471-4094